MOTION FILED
AUG 9 - 2007

No. 07-56

In the Supreme Court of the United States

ESTATE OF MARY LOWE, BY ROBERT F. HARRIS,
COOK COUNTY PUBLIC GUARDIAN AND
SUPERVISED ADMINISTRATOR,
Petitioner,

v.

APEX TAX INVESTMENTS, INC. AND JOHN HERNDON,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

MOTION FOR LEAVE TO FILE and BRIEF *AMICUS CURIAE* ON BEHALF OF MENTAL HEALTH AMERICA AND THE MENTAL HEALTH PROJECT OF THE UNIVERSITY OF CHICAGO LAW SCHOOL EDWIN F. MANDEL LEGAL AID CLINIC IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI BY THE ESTATE OF MARY LOWE

MARK J. HEYRMAN
Counsel for *Amici Curiae*,
MENTAL HEALTH AMERICA AND
THE MENTAL HEALTH PROJECT OF
THE UNIVERSITY OF CHICAGO LAW SCHOOL
EDWIN F. MANDEL LEGAL AID CLINIC
6020 South University Avenue
Chicago, Illinois 60637-2786
(773) 702-9611

No. 07-56

In the Supreme Court of the United States

ESTATE OF MARY LOWE, BY ROBERT F. HARRIS,
COOK COUNTY PUBLIC GUARDIAN AND
SUPERVISED ADMINISTRATOR,
Petitioner,

v.

APEX TAX INVESTMENTS, INC. AND JOHN HERNDON,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

Motion for leave to file a brief *amicus curiae* in support of the petition for a writ of certiorari by the Estate of Mary Lowe

Amici, the Mental Health America (MHA) and the Mental Health Project of the University of Chicago Law School's Edwin F. Mandel Legal Aid Clinic (Mental Health Project) file this motion for leave to file a brief *amicus curiae* in support of the petition for certiorari. Consent was requested from counsel for all parties. Consent was obtained from Mr. Barry Sullivan, counsel for the Petitioner, the Estate of Mary Lowe, and is attached. As of the date of the filing of this motion, Ms. Denise Brewer, counsel for the Respondent, John Herndon, had not

provided consent.[1] Amici state the following reasons in support of this motion:

1. The legal rule at issue in the case at bar has the potential to affect the lives of persons with mental illnesses across the United States.

2. MHA and the Mental Health Project are uniquely situated to inform the Court regarding the impact this case is likely to have on the lives of persons with mental illnesses.

3. MHA is comprised of mental health professionals, current and former consumers of mental health services, their family members, and concerned citizens. MHA is a primary source of referral and educational material for a wide variety of people, from family members to mental health professionals and legislators.

4. The Mental Health Project has provided legal counsel to persons with mental illnesses for over twenty-five years and seeks to improve the law as it relates to persons with mental illnesses. It also seeks to improve the treatment of persons with mental illnesses, both inside and outside mental health facilities.

5. With its broad experience in the field of mental health law, Amici will explain to the Court how this case will adversely affect individuals with mental illnesses.

---

[1] Apex Tax Investments, though named in the case, did not appear in the Supreme Court of Illinois.

WHEREFORE, Amici respectfully request that the Court allow this brief *amicus curiae* to be filed in support of the petition for certiorari.

Respectfully submitted,

Mark J. Heyrman
Counsel for *Amici Curiae*
Mental Health America and the
Mental Health Project at the
University of Chicago Law School
Edwin F. Mandel Legal Aid Clinic
6020 South University Avenue
Chicago, Illinois 60637-2786
(773) 702-9611

In the Supreme Court of the United States

I hereby grant my consent to **Mental Health America and the Mental Health Project at the University of Chicago Mandel Legal Aid Clinic** to submit an *amicus curiae* brief in the Petition for a Writ of Certiorari to the Supreme Court of Illinois in the case of:

ESTATE OF MARY LOWE, BY ROBERT F. HARRIS, COOK COUNTY PUBLIC GUARDIAN AND SUPERVISED ADMINISTRATOR,

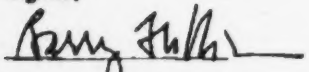
Petitioner,

v.

APEX TAX INVESTMENTS, INC. AND JOHN HERNDON,

Respondents.

Signed,



Barry Sullivan

Jenner and Block, LLP

30 North Wabash Avenue

Chicago, Illinois 60611

TOTAL P.02

No. 07-56

In the Supreme Court of the United States

ESTATE OF MARY LOWE, BY ROBERT F. HARRIS,
COOK COUNTY PUBLIC GUARDIAN AND
SUPERVISED ADMINISTRATOR,
Petitioner,

v.

APEX TAX INVESTMENTS, INC. AND JOHN HERNDON,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Illinois

BRIEF *AMICUS CURIAE* ON BEHALF OF MENTAL HEALTH AMERICA AND THE MENTAL HEALTH PROJECT OF THE UNIVERSITY OF CHICAGO LAW SCHOOL EDWIN F. MANDEL LEGAL AID CLINIC

IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI BY THE ESTATE OF MARY LOWE

MARK J. HEYRMAN
Counsel for *Amici Curiae*,
MENTAL HEALTH AMERICA AND
THE MENTAL HEALTH PROJECT OF
THE UNIVERSITY OF CHICAGO LAW SCHOOL
EDWIN F. MANDEL LEGAL AID CLINIC
6020 South University Avenue
Chicago, Illinois 60637-2786
(773) 702-9611

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTEREST OF THE AMICI CURIAE 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 2

I. THE SUPREME COURT OF ILLINOIS'S DECISION CONFLICTS WITH THIS COURT'S DECISION IN *JONES V. FLOWERS* BY ALLOWING PARTIES RESPONSIBLE FOR GIVING PROPERTY OWNERS NOTICE OF IMPENDING FORFEITURE TO IGNORE INFORMATION NECESSARY TO LOCATE THE OWNER. 2

II. THE SUPREME COURT OF ILLINOIS MISAPPLIED JONES BY FAILING TO DETERMINE IF APEX COULD HAVE TAKEN ADDITIONAL STEPS TO SERVE NOTICE ON LOWE 8

CONCLUSION 11

TABLE OF AUTHORITIES

CASES

In re Application of the County Collector, 876 N.E.2d 941 (Ill. 2007) ..... passim

Jones v. Flowers, 547 U.S. 220 (2006) ..... passim

STATUTES

405 ILCS 5/2-113(d) 5

OTHER AUTHORITIES

Illinois Department of Human Services, Office of Mental Health and Developmental Disabilities, *Illinois Statistics Fiscal Year 2006* (2006) 7

President's New Freedom Commission on Mental Health, U.S. Dep't of Health and Human Service, *Achieving the Promise: Transforming Mental Health Care in America* (2003) 4

U.S. Dep't of Health and Human Services, *Mental Health, United States, 2004* (Ronald W. Manderscheid et. al. eds., 2006) 3

U.S. Dep't of Health and Human Services, U.S. Public Health Serv., *Mental Health: A Report of the Surgeon General* (1999). 3

INTEREST OF THE AMICI CURIAE

Petitioner, the Estate of Mary Lowe, seeks a writ of certiorari to the Supreme Court of Illinois in this case. Amici,[2] Mental Health America (MHA) and the Mental Health Project of the University of Chicago Law School's Edwin F. Mandel Legal Aid Clinic (Mental Health Project) support the petition for certiorari because of the significant impact of the Supreme Court of Illinois's decision on individuals with mental illness.

MHA is comprised of mental health professionals, current and former consumers of mental health services, their family members, and concerned citizens. MHA's goal is to promote mental health, prevent mental illness, and improve the law relating to people with mental illness. MHA is a primary source of referral and educational material for a wide variety of people, from family members to mental health professionals and legislators.

The Mental Health Project has provided legal counsel to individuals with mental illnesses for over twenty-five years. It seeks to improve the law as it relates to individuals with mental illnesses, and it works to better the treatment of individuals with mental illnesses, both inside and outside mental health facilities.

Amici seek to explain how individuals with mental illness will be adversely affected if the

---

[2] This brief was not authored in any part by a party to the proceeding. No person or entity other than Amici made a monetary contribution to the preparation or submission of this brief.

decision of the Supreme Court of Illinois is allowed to stand.

SUMMARY OF THE ARGUMENT

The decision of the Supreme Court of Illinois conflicts with this Court's due process precedent. If it is allowed to stand, persons with mental illnesses will not be afforded due process of law in property forfeiture proceedings. When a person responsible for giving notice in a tax sale or property forfeiture proceeding receives new information suggesting that notice was not received because the property owner is hospitalized, *Jones v. Flowers*, requires that person "take[] additional reasonable steps" to notify the property owner." 547 U.S. 220, 234 (2006).

ARGUMENT

I. THE SUPREME COURT OF ILLINOIS'S DECISION CONFLICTS WITH THIS COURT'S DECISION IN *JONES V. FLOWERS* BY ALLOWING PARTIES RESPONSIBLE FOR GIVING PROPERTY OWNERS NOTICE OF IMPENDING FORFEITURE TO IGNORE INFORMATION NECESSARY TO LOCATE THE OWNER.

The question of greatest importance to Amici is whether the party required to provide constitutionally sufficient notice may ignore an undelivered, returned notice, which contains new information indicating that the property owner is hospitalized simply because the party took some reasonable steps to provide actual notice before

learning of the hospitalization. Assuring that property owners are given notice of impending forfeiture is especially important to Amici because of the additional barriers mentally ill individuals face in obtaining affordable housing.

National epidemiological surveys estimate that 22 to 23 percent of the United States adult population, or 69 million people[3], have a diagnosable mental disorder. U.S. Dep't of Health and Human Services, U.S. Public Health Serv., *Mental Health: A Report of the Surgeon General* 46 (1999). While only a small portion of individuals with mental illness may be hospitalized in a given year, the number of hospitalized individuals is still quite large and the number at risk for hospitalization is even larger. After eight years of decreasing levels of hospitalization, the number of individuals hospitalized for mental illness increased in 2002 to 180,543. U.S. Dep't of Health and Human Services, *Mental Health, United States, 2004* Table 19.5 (Ronald W. Manderscheid et. al. eds., 2006). Furthermore, approximately 7.8 million adults have a "severe and persistent" mental illness, *see Report of the Surgeon General* at 46, and may be at risk for hospitalization if they experience a mental health crisis that cannot be resolved in a community treatment setting. *id.* at 287.

Consumers of mental health services are more apt to benefit from treatment when they have

---

[3] Population estimates based on United States Census Bureau population estimates for July 1, 2006 of 299,398,484. http://www.census.gov/popest/states/NST-ann-est.html.

housing in place. *See* President's New Freedom Commission on Mental Health, U.S. Dep't of Health and Human Service, *Achieving the Promise: Transforming Mental Health Care in America* 42 (2003). The President's New Freedom Commission on Mental Health has recognized that "the lack of decent, safe, affordable, and integrated housing is one of the most significant barriers to full participation in community life for people with serious mental illnesses" and that "the shortage of affordable housing and accompanying support services causes people with serious mental illnesses to cycle among jails, institutions, shelters, and the streets." *Id.* at 30. When failure to take reasonable steps to provide a mentally ill homeowner with notice of the impending forfeiture of his or her home results in the loss of that home, alternative housing may be unavailable. Assuring that property owners' due process right to notice of forfeiture is preserved will benefit individuals with mental illness by increasing the opportunities for them to remain in their homes. Consequently, it will promote recovery, prolong remission and allow mentally ill homeowners to remaining within their communities.

In the case at bar, the Supreme Court of Illinois held that once a person responsible for giving notice of an impending forfeiture has established and pursued one theory for the failure of notice, additional information strongly suggesting another reason for the inability to provide notice does not create obligation to use that information. *In re Application of the County Collector*, 876 N.E.2d 941 (Ill. 2007). Apex Tax Investments (Apex), the party responsible for providing the property owner, Mary

Lowe, of the impending forfeiture of her home, learned of Lowe's hospitalization through a notation from her mail carrier written on the envelope of the certified letter of notice sent to Lowe from the Sheriff. (Pet. for Cert. at 9.) The notation stated "Person is Hospitalized" and included the mail carrier's initials and route number. (Pet. for Cert. at 7.) The Supreme Court of Illinois reasoned that Apex was not required to inquire further into Lowe's location upon receiving the envelope because Apex had previously taken additional steps to notify her. 876 N.E.2d at 953. Such reasoning is inconsistent with this Court's recent decision in *Jones v. Flowers*, 547 U.S. 220 (2006).

Apex's acquisition of information indicating Lowe's hospitalization and subsequent failure to follow-up on that information is no different than the scenario in *Jones* of the Commissioner handing a stack of mail to a postman and then watching the postman accidentally drop the letters down the drain. 547 U.S. at 229. The *Jones* Court explained that "[n]o one desirous of actually informing the owners would simply shrug his shoulders as the letters disappeared and say 'I tried.'" *Id.* Yet, that is exactly what Apex did when it learned of Lowe's hospitalization. Apex did nothing.

The parties and Amici agree that Apex did more than necessary under Illinois law to locate Lowe prior to learning of her hospitalization. However, the notated envelope was the last piece of information Apex received in their attempts at notice. (Pet. for Cert. at 7-10.) *Jones* requires that when the party responsible for providing notice receives information suggesting that their attempts

at notice have failed, that person must "take[] additional reasonable steps to notify [the property owner]" and that "[w]hat steps are reasonable in response to new information depends on what the new information reveals." 547 U.S. at 234.

When new information reveals that the intended recipient of notice is hospitalized, along with whom to contact for additional details, due process cannot be satisfied by prior attempts to locate the property owner that did not take this new information into account. The Supreme Court of Illinois supports its conclusion that Apex was not required to conduct further investigation into Lowe's whereabouts by explaining that "[t]he information available to [Apex's agent] was that the property was vacant and that Lowe had moved" and that Apex had also checked phone directories and voter registration records. *In re Application of the County Collector*, 867 N.E.2d at 953. However, the additional attempts at locating Lowe occurred before Apex acquired the information about Lowe's hospitalization and likely reason for the failed notice attempts. Under the Supreme Court of Illinois's reasoning, the party responsible for providing notice is free to ignore new information so long as he took additional steps to provide notice before obtaining new information. *Jones* does not permit this outcome when, as in this case, "reasonable additional steps" can be taken to provide notice.

The Supreme Court of Illinois's decision presents unique problems for property owners confined in mental hospitals. Apex's determination that Lowe had moved was perfectly consistent with the reality that she was hospitalized at Tinley Park

Mental Health Center (TPMHC). Lowe had moved, temporarily and for an indeterminate time, to TPMHC. However, the often sudden and unexpected nature of hospitalization for psychiatric treatment makes it unlikely that someone attempting to locate a hospitalized individual will find new contact information for that person through the traditional process of searching phone directories and public records.

The average length of stay at TPMHC in Illinois State Fiscal Year 2006 was 287 days. Illinois Department of Human Services, Office of Mental Health and Developmental Disabilities, *Illinois Statistics Fiscal Year 2006*, 12 (2006). Lowe's hospitalization at TPMHC during the time at issue in this case lasted for 477 days. (Pet. for Cert at 5.) A person hospitalized for an acute medical illness may be in and out of the hospital in the time that mailed delivery of notice would be re-attempted. Someone hospitalized in a State mental health center may be hospitalized during the entire period in which notice is attempted. If the person responsible for providing notice is permitted to ignore information about a property owner's hospitalization, anytime a property owner subject to forfeiture proceedings is confined at a mental hospital they are at a high risk of losing their property without adequate notice.

II. THE SUPREME COURT OF ILLINOIS MISAPPLIED JONES BY FAILING TO DETERMINE IF APEX COULD HAVE TAKEN ADDITIONAL STEPS TO SERVE NOTICE ON LOWE

The Supreme Court of Illinois mischaracterized the goal of the additional steps to provide notice required by *Jones*. The court declined to reverse their earlier holding in this case in part because they did not believe that "had Apex followed up on [the mail carrier's] notation, Apex would have discovered where Lowe was hospitalized and that Lowe was mentally incompetent." *In re Application of the County Collector*, 867 N.E.2d at 953. Under *Jones*, the purpose of taking additional steps is to "increase the likelihood that the owner [will] be notified." 547 U.S. at 235. It is not to identify a specific location where a property owner can be notified or to determine that a property owner is incompetent.

The response to a postman dropping a stack of notice letters into a storm drain is for the person responsible providing notice to send out a new batch of letters. *Id.* at 229. *Jones* does not require that all of the new letters reach their intended recipients in order to satisfy due process. Similarly, *Jones* does not require that Apex take steps to verify that Lowe was confined at TPMHC or that she was mentally incompetent. *Jones* only requires that Apex send out another letter to an address determined by taking into account the new information that Lowe was hospitalized. *Jones* imposes no obligation on Apex to assure that the letter will be received or that the intended recipient is mentally competent.

Jones requires that the additional reasonable steps taken after new information is received about the failure of previous notice attempts be related to the new information received. *Id.* at 234. In this case, the additional reasonable steps that Apex could have taken included contacting the post office to determine if they had additional information about Lowe's hospitalization or could put Apex in touch with the mail carrier who made the envelope notation.

The Supreme Court of Illinois assumed that Lowe's mail carrier could not release any information about her hospitalization because the mail carrier "did not explain what postal forms would have authorized disclosure that Lowe was hospitalized in the Tinley Park Mental Health Center." *Id.* The parties and Amici agree, and the trial court testimony reflects (Pet. for Cert. at 12), that the mail carrier knew the location of Lowe's hospitalization and that both she and the branch post office could provide that information to anyone who asked. Furthermore, the Public Guardian located the mail carrier and obtained information about the location of Lowe's hospitalization by following the information in the envelope notation.

Jones does not allow the person responsible for providing notice of an impending forfeiture to do nothing when they obtain information indicating that their attempts at notice have failed and there are reasonable additional steps that can be taken to increase the likelihood of successful notice. Because Apex could have taken the reasonable additional step of following up on the envelope notations indicating that Lowe was hospitalized, and such follow up

would have required only a phone call, due process requires that they take that step. Instead, Apex failed to take any additional steps upon learning of Lowe's hospitalization and, without constitutionally required due process, Lowe lost her home.

CONCLUSION

For the foregoing reasons, Amici support the petition for certiorari.

Respectfully submitted,

Mark J. Heyrman
Counsel for *Amici Curiae*
Mental Health America and the
Mental Health Project at the
University of Chicago Law School
Edwin F. Mandel Legal Aid Clinic
6020 South University Avenue
Chicago, Illinois 60637-2786
(773) 702-9611